

recently completed fiscal years, or the Secretary or a State or guaranty agency that conducted a review of the institution covering those fiscal years—

(i)(A) For either of those fiscal years, did not find in the sample of student records audited or reviewed that the institution made late refunds to 5 percent or more of the students in that sample. For purposes of determining the percentage of late refunds under this paragraph, the auditor or reviewer must include in the sample only those title IV, HEA program recipients who received or should have received a refund under § 668.22; or

(B) The Secretary considers the institution to have satisfied the conditions in paragraph (g)(1)(i)(A) of this section if the auditor or reviewer finds in the sample of student records audited or reviewed that the institution made only one late refund to a student in that sample; and

(ii) For either of those fiscal years, did not note a material weakness or a reportable condition in the institution's report on internal controls that is related to refunds.

(2) If the Secretary or a State or guaranty agency finds during a review conducted of the institution that the institution no longer qualifies for an exemption under paragraph (d)(1)(C) of this section, the institution must—

(i) Submit to the Secretary the irrevocable letter of credit required in paragraph (b)(5) of this section no later than 30 days after the Secretary or State or guaranty agency notifies the institution of that finding; and

(ii) Notify the Secretary of the guaranty agency or State that conducted the review.

(3) If the auditor who conducted the institution's compliance audit finds that the institution no longer qualifies for an exemption under paragraph (d)(1)(C) of this section, the institution must submit to the Secretary the irrevocable letter of credit required in paragraph (b)(5) of this section no later than 30 days after the date the institution's compliance audit must be submitted to the Secretary.

(h) *Foreign institutions.* The Secretary makes a determination of financial responsibility for a foreign institution on the basis of financial statements sub-

mitted under the following requirements—

(1) If the institution received less than \$500,000 U.S. in title IV, HEA program funds during its most recently completed fiscal year, the institution must submit its audited financial statement for that year. For purposes of this paragraph, the audited financial statements may be prepared under the auditing standards and accounting principles used in the institution's home country; or

(2) If the institution received \$500,000 U.S. or more in title IV, HEA program funds during its most recently completed fiscal year, the institution must submit its audited financial statement in accordance with the requirements of § 668.23, and satisfy the general standards of financial responsibility contained in this section, or qualify under an alternate standard of financial responsibility contained in this section.

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§ 668.16 Standards of administrative capability.

To begin and to continue to participate in any Title IV, HEA program, an institution shall demonstrate to the Secretary that the institution is capable of adequately administering that program under each of the standards established in this section. The Secretary considers an institution to have that administrative capability if the institution—

(a) Administers the Title IV, HEA programs in accordance with all statutory provisions of or applicable to Title IV of the HEA, all applicable regulatory provisions prescribed under that statutory authority, and all applicable special arrangements, agreements, and limitations entered into under the authority of statutes applicable to Title IV of the HEA;

(b)(1) Designates a capable individual to be responsible for administering all

the Title IV, HEA programs in which it participates and for coordinating those programs with the institution's other Federal and non-Federal programs of student financial assistance. The Secretary considers an individual to be "capable" under this paragraph if the individual is certified by the State in which the institution is located, if the State requires certification of financial aid administrators. The Secretary may consider other factors in determining whether an individual is capable, including, but not limited to, the individual's successful completion of Title IV, HEA program training provided or approved by the Secretary, and previous experience and documented success in administering the Title IV, HEA programs properly;

(2) Uses an adequate number of qualified persons to administer the Title IV, HEA programs in which the institution participates. The Secretary considers the following factors to determine whether an institution uses an adequate number of qualified persons—

- (i) The number and types of programs in which the institution participates;
- (ii) The number of applications evaluated;
- (iii) The number of students who receive any student financial assistance at the institution and the amount of funds administered;
- (iv) The financial aid delivery system used by the institution;
- (v) The degree of office automation used by the institution in the administration of the Title IV, HEA programs;
- (vi) The number and distribution of financial aid staff; and
- (vii) The use of third-party servicers to aid in the administration of the Title IV, HEA programs;

(3) Communicates to the individual designated to be responsible for administering Title IV, HEA programs, all the information received by any institutional office that bears on a student's eligibility for Title IV, HEA program assistance; and

(4) Has written procedures for or written information indicating the responsibilities of the various offices with respect to the approval, disbursement, and delivery of Title IV, HEA program assistance and the prepara-

tion and submission of reports to the Secretary;

(c)(1) Administers Title IV, HEA programs with adequate checks and balances in its system of internal controls; and

(2) Divides the functions of authorizing payments and disbursing or delivering funds so that no office has responsibility for both functions with respect to any particular student aided under the programs. For example, the functions of authorizing payments and disbursing or delivering funds must be divided so that for any particular student aided under the programs, the two functions are carried out by at least two organizationally independent individuals who are not members of the same family, as defined in § 668.15, or who do not together exercise substantial control, as defined in § 668.15, over the institution;

(d)(1) Establishes and maintains records required under this part and the individual Title IV, HEA program regulations; and

(2)(i) Reports annually to the Secretary on any reasonable reimbursements paid or provided by a private education lender or group of lenders as described under section 140(d) of the Truth in Lending Act (15 U.S.C. 1631(d)) to any employee who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to education loans, including responsibilities involving the selection of lenders, or other financial aid of the institution, including—

(A) The amount for each specific instance of reasonable expenses paid or provided;

(B) The name of the financial aid official, other employee, or agent to whom the expenses were paid or provided;

(C) The dates of the activity for which the expenses were paid or provided; and

(D) A brief description of the activity for which the expenses were paid or provided.

(ii) Expenses are considered to be reasonable if the expenses—

(A) Meet the standards of and are paid in accordance with a State government reimbursement policy applicable to the entity; or

(B) Meet the standards of and are paid in accordance with the applicable Federal cost principles for reimbursement, if no State policy that is applicable to the entity exists.

(iii) The policy must be consistently applied to an institution's employees reimbursed under this paragraph;

(e) For purposes of determining student eligibility for assistance under a Title IV, HEA program, establishes, publishes, and applies reasonable standards for measuring whether an otherwise eligible student is maintaining satisfactory progress in his or her educational program. The Secretary considers an institution's standards to be reasonable if the standards—

(1) Are the same as or stricter than the institution's standards for a student enrolled in the same educational program who is not receiving assistance under a Title IV, HEA program;

(2) Include the following elements:

(i) A qualitative component which consists of grades (provided that the standards meet or exceed the requirements of § 668.34), work projects completed, or comparable factors that are measurable against a norm.

(ii) A quantitative component that consists of a maximum timeframe in which a student must complete his or her educational program. The timeframe must—

(A) For an undergraduate program, be no longer than 150 percent of the published length of the educational program measured in academic years, terms, credit hours attempted, clock hours completed, etc. as appropriate;

(B) Be divided into increments, not to exceed the lesser of one academic year or one-half the published length of the educational program;

(C) Include a schedule established by the institution designating the minimum percentage or amount of work that a student must successfully complete at the end of each increment to complete his or her educational program within the maximum timeframe; and

(D) Include specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress;

(3) Provide for consistent application of standards to all students within categories of students, e.g., full-time, part-time, undergraduate, and graduate students, and educational programs established by the institution;

(4) Provide for a determination at the end of each increment by the institution as to whether the student has met the qualitative and quantitative components of the standards (as provided for in paragraphs (e)(2)(i) and (ii) of this section);

(5) Provide specific procedures under which a student may appeal a determination that the student is not making satisfactory progress; and

(6) Provide specific procedures for a student to re-establish that he or she is maintaining satisfactory progress.

(f) Develops and applies an adequate system to identify and resolve discrepancies in the information that the institution receives from different sources with respect to a student's application for financial aid under Title IV, HEA programs. In determining whether the institution's system is adequate, the Secretary considers whether the institution obtains and reviews—

(1) All student aid applications, need analysis documents, Statements of Educational Purpose, Statements of Registration Status, and eligibility notification documents presented by or on behalf of each applicant;

(2) Any documents, including any copies of State and Federal income tax returns, that are normally collected by the institution to verify information received from the student or other sources; and

(3) Any other information normally available to the institution regarding a student's citizenship, previous educational experience, documentation of the student's social security number, or other factors relating to the student's eligibility for funds under the Title IV, HEA programs;

(g) Refers to the Office of Inspector General of the Department of Education for investigation—

(1) After conducting the review of an application provided for under paragraph (f) of this section, any credible

information indicating that an applicant for Title IV, HEA program assistance may have engaged in fraud or other criminal misconduct in connection with his or her application. The type of information that an institution must refer is that which is relevant to the eligibility of the applicant for Title IV, HEA program assistance, or the amount of the assistance. Examples of this type of information are—

- (i) False claims of independent student status;
- (ii) False claims of citizenship;
- (iii) Use of false identities;
- (iv) Forgery of signatures or certifications; and
- (v) False statements of income; and

(2) Any credible information indicating that any employee, third-party servicer, or other agent of the institution that acts in a capacity that involves the administration of the Title IV, HEA programs, or the receipt of funds under those programs, may have engaged in fraud, misrepresentation, conversion or breach of fiduciary responsibility, or other illegal conduct involving the Title IV, HEA programs. The type of information that an institution must refer is that which is relevant to the eligibility and funding of the institution and its students through the Title IV, HEA programs;

(h) Provides adequate financial aid counseling to eligible students who apply for Title IV, HEA program assistance. In determining whether an institution provides adequate counseling, the Secretary considers whether its counseling includes information regarding—

(1) The source and amount of each type of aid offered;

(2) The method by which aid is determined and disbursed, delivered, or applied to a student's account; and

(3) The rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid. This information includes the institution's refund policy, the requirements for the treatment of title IV, HEA program funds when a student withdraws under § 668.22, its standards of satisfactory progress, and other conditions that may alter the student's aid package;

(i) Has provided all program and fiscal reports and financial statements required for compliance with the provisions of this part and the individual program regulations in a timely manner;

(j) Shows no evidence of significant problems that affect, as determined by the Secretary, the institution's ability to administer a Title IV, HEA program and that are identified in—

(1) Reviews of the institution conducted by the Secretary, the Department of Education's Office of Inspector General, nationally recognized accrediting agencies, guaranty agencies as defined in 34 CFR part 682, the State agency or official by whose authority the institution is legally authorized to provide postsecondary education, or any other law enforcement agency; or

(2) Any findings made in any criminal, civil, or administrative proceeding;

(k) Is not, and does not have any principal or affiliate of the institution (as those terms are defined in 34 CFR part 85) that is—

(1) Debarred or suspended under Executive Order (E.O.) 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations (FAR), 48 CFR part 9, subpart 9.4; or

(2) Engaging in any activity that is a cause under 34 CFR 85.305 or 85.405 for debarment or suspension under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4;

(l) For an institution that seeks initial participation in a Title IV, HEA program, does not have more than 33 percent of its undergraduate regular students withdraw from the institution during the institution's latest completed award year. The institution must count all regular students who are enrolled during the latest completed award year, except those students who, during that period—

(1) Withdrew from, dropped out of, or were expelled from the institution;

(2) Were entitled to and actually received in a timely manner, a refund of 100 percent of their tuition and fees;

(m)(1) Has a cohort default rate—

(i) That is less than 25 percent for each of the three most recent fiscal years during which rates have been issued, to the extent those rates are

calculated under subpart M of this part;

(ii) On or after 2014, that is less than 30 percent for at least two of the three most recent fiscal years during which the Secretary has issued rates for the institution under subpart N of this part; and

(iii) As defined in 34 CFR 674.5, on loans made under the Federal Perkins Loan Program to students for attendance at that institution that does not exceed 15 percent.

(2)(i) However, if the Secretary determines that an institution's administrative capability is impaired solely because the institution fails to comply with paragraph (m)(1) of this section, and the institution is not subject to a loss of eligibility under §§ 668.187(a) or 668.206(a), the Secretary allows the institution to continue to participate in the Title IV, HEA programs. In such a case, the Secretary may provisionally certify the institution in accordance with § 668.13(c) except as provided in paragraphs (m)(2)(ii), (m)(2)(iii), (m)(2)(iv), and (m)(2)(v) of this section.

(ii) An institution that fails to meet the standard of administrative capability under paragraph (m)(1)(ii) based on two cohort default rates that are greater than or equal to 30 percent but less than or equal to 40 percent is not placed on provisional certification under paragraph (m)(2)(i) of this section—

(A) If it has timely filed a request for adjustment or appeal under §§ 668.209, 668.210, or 668.212 with respect to the second such rate, and the request for adjustment or appeal is either pending or succeeds in reducing the rate below 30 percent; or

(B) If it has timely filed an appeal under §§ 668.213 or 668.214 after receiving the second such rate, and the appeal is either pending or successful.

(iii) The institution may appeal the loss of full participation in a Title IV, HEA program under paragraph (m)(2)(i) of this section by submitting an erroneous data appeal in writing to the Secretary in accordance with and on the grounds specified in §§ 668.192 or 668.211 as applicable;

(iv) If you have 30 or fewer borrowers in the three most recent cohorts of borrowers used to calculate your cohort

default rate under subpart N of this part, we not provisionally certify you solely based on cohort default rates;

(v) If a rate that would otherwise potentially subject you to provisional certification under paragraph (m)(1)(ii) and (m)(2)(i) of this section is calculated as an average rate, we will not provisionally certify you solely based on cohort default rates;

(n) Does not otherwise appear to lack the ability to administer the Title IV, HEA programs competently; and

(o) Participates in the electronic processes that the Secretary—

(1) Provides at no substantial charge to the institution; and

(2) Identifies through a notice published in the FEDERAL REGISTER.

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§ 668.17 [Reserved]

§ 668.18 Readmission requirements for servicemembers.

(a) *General.* (1) An institution may not deny readmission to a person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform, service in the uniformed services on the basis of that membership, application for membership, performance of service, application for service, or obligation to perform service.

(2)(i) An institution must promptly readmit to the institution a person described in paragraph (a)(1) of this section with the same academic status as the student had when the student last attended the institution or was last admitted to the institution, but did not begin attendance because of that membership, application for membership, performance of service, application for service, or obligation to perform service.